

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Division of Occupational Safety and Health of the Department of Industrial Relations is proposing to take the action described in the Informative Digest/Policy Statement Overview (hereinafter "the Proposed Rulemaking"). Any person interested may present statements or arguments orally or in writing relevant to the Proposed Rulemaking at a hearing to be held in the Training Room at 1515 Clay Street, 13th Floor, Oakland, California on January 10, 2005, between 9:00 and 11:00 a.m. These facilities are accessible to persons with mobility impairments.

Written comments must be received by the Division at its office not later than 5:00 p.m. on January 10, 2005, or must be received by the Division at the hearing. The official record of the rulemaking proceeding will be closed at 5 p.m. on January 10, 2005. Written comments received after that date and time shall not be considered unless an extension of time in which to receive written comments is announced at the public hearing.

The Division may thereafter adopt the Proposed Rulemaking substantially as described below or may modify it if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Authority cited: Labor Code sections 60.5, 6308, 7311.4 and 7314. Reference: Labor Code sections 60.5, 6308, 7311.4 and 7314.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to Labor Code sections 60.5 and 6308, the Division of Occupational Safety and Health ("the Division") of the Department of Industrial Relations is charged with the administration and enforcement of the provisions of the California Occupational Safety and Health Act, (commencing with Labor Code section 6300,) as well as other provisions of law impacting upon the health and safety of employees in the State of California.

In 2002, the California Legislature enacted the Elevators, Escalators, Platform and Stairway Chair Lifts, Dumbwaiters, Moving Walks, Automated People Movers, and Other Conveyances Law. (Labor Code §§ 7300, et seq.; hereinafter "the Act".) The Act covers the permitting, design, erection, construction, installation, alteration, inspection, testing, maintenance, repair, service and operation of specified elevators, escalators and other "conveyances".

The Act also requires the certification of certain individuals and businesses who install, inspect, repair or otherwise work with conveyances.

Sections 7311.4 and 7314 authorize the Division to establish fees for the inspection of conveyances, as well as for the certification of businesses and individuals under the Act. All fees promulgated under Sections 7311.4 and 7314 must cover the Division's costs in performing its statutory duties.

The Division has determined that the cost to it in conducting inspections, reviewing applications for certification, and performing other functions necessary to the administration of its conveyance program is \$140.00 per hour. (This hourly rate also incorporates the cost of personnel time spent in general training, travel, meetings and other non-revenue-generating activities which, though not linked to any specific inspection or application, are nonetheless necessary for the administration of the conveyance program.) Consequently, to fund its conveyance program through certification and inspection fees consistent with the legislative mandate, the Division must charge fees based on the number of personnel hours necessary to complete an inspection, or review an application for certification, multiplied by \$140.00. Thus, for example, the \$280.00 per unit fee for re-inspection of escalators and moving walks is based on the Division's determination that it should take two hours to complete such an inspection. By the same token, since the Division has determined that one of its inspectors should spend, on the average, only half an hour re-inspecting a hand elevator, the fee for that service would be \$70.00.

Accordingly, the Division proposes to amend Section 344.30, as follows:

The Division would assign numbers and letters to the subsections of Section 344.30 for ease of reference.

Subsection (a).

The Proposed Rulemaking would amend Section 344.30(a) to reflect that the fees set forth in Subsection 344.30(a) are for re-inspections, periodic inspections and witnessing of periodic tests of an existing installation (collectively referred to as "re-inspections").

In addition, the re-inspection fee for hand dumbwaiters would increase from \$55 to \$70 per unit.

The re-inspection fee for power dumbwaiters (and now material lifts) would increase from \$82 to \$105.00 per unit.

The re-inspection fee for Hand elevators would increase from \$55 to \$70.

The Proposed Rulemaking would fix a fee of \$140.00 per unit for the re-inspection of material lifts with automatic transfer devices.

The fees for re-inspection of power sidewalk elevators and hand-powered man platforms would increase from \$110.00 per unit to \$140.00 per unit.

The fee for re-inspection of escalators and moving walks would increase from \$110.00 per unit to \$280.00 per unit.

The fee for re-inspection of manlifts would increase from \$110.00 per unit to \$140.00 per unit.

The Proposed Rulemaking would delete the subheading “Power passenger or freight elevators:” and would instead add the word “elevator” to subsections (a)(9) through (a)(13) to clarify that all the conveyances referenced in those subsections are elevators. It would also add a new class of elevators to the power passenger or freight elevator classification: namely, rope hydraulic elevators. The fees for re-inspection of direct plunger hydraulic elevators and also roped hydraulic elevators would vary depending on the number of floors the conveyances cover. Up to three stories, the fee would be \$105.00 per unit. The per-unit fee to inspect systems of four stories or more would be \$140.00. The fee for re-inspecting cabled power passenger or freight elevators of up to three stories would be \$140.00 per unit. If the conveyances cover between four and ten stories, the fee would be \$210.00 per unit. For units spanning 11 through 20 stories, the fee would be \$280.00. Finally, the Division would charge \$350.00 to re-inspect units spanning 21 or more stories.

The Proposed Rulemaking would rename private residence elevators to special access elevators and the fee for re-inspection of this type of elevator would increase from \$110.00 per unit to \$140.00 per unit.

The fee for re-inspection of a screw-type unit would increase from \$110.00 per unit to \$140.00 per unit. The Proposed Rulemaking would also add the word “elevator” to Section 344.30(a)(16) to clarify that the Division is referring to screw-type elevators.

The fee for re-inspection of a wheelchair lift, whether the lift be a vertical lift (running straight up and down) or an incline lift (running at an angle), would increase from \$82.00 per unit to \$105.00 per unit.

The fee for re-inspection of a stairway chair lift would increase from \$55.00 per unit to \$70.00 per unit.

If an elevator is installed by variance, the fee for re-inspection would increase from \$110.00 per hour to \$140.00 per hour.

The fee for re-inspection of elevators or dumbwaiters with automatic transfer devices would increase from \$110.00 per unit to \$140.00 per unit.

The fee for re-inspection of an incline elevator would change from \$110.00 per hour to \$210.00 per unit.

The fee for the re-inspection of construction personnel hoists would increase from \$110.00 per hour to \$140.00 per hour.

The fee for re-inspection of a special purpose personnel elevator would change from \$110.00 per unit to \$140.00 per unit.

The Proposed Rulemaking would establish a new fee of \$140.00 for re-inspection of a rack and pinion elevator, a type of conveyance not previously addressed by Section 344.30.

The Proposed Rulemaking would establish a new fee of \$140.00 per unit for the re-inspection of vertical and inclined reciprocating conveyors, a class of conveyance not previously addressed by Section 344.30.

The Proposed Rulemaking would establish a new fee of \$140.00 per hour for the witnessing of periodic tests.

The Proposed Rulemaking would establish a new fee of \$1,120.00 per unit for re-inspecting automatic guided vehicles on guideways, a new classification of conveyance within the Division's jurisdiction.

Subsection (b).

The Proposed Rulemaking would increase the fee for the inspection of a new installation of any type of conveyance from \$110.00 per hour to \$210.00 per hour, or any fraction thereof.

Subsection (c).

The Proposed Rulemaking would increase the fee for the inspection of any alteration to a conveyance from \$110.00 per hour to \$ 210.00 per hour, or any fraction thereof. Also the Proposed Rulemaking would delete the definition of "major alteration", because the fee for alternations would apply to any alteration, and not just to "major alterations".

Subsection (d).

The Proposed Rulemaking would delete the partial list of types of "replacement inspections" in subsection (d) and instead would clarify that all replacement inspections required under Section 3001(b)(3) would carry a fee of \$140.00 per hour, or any fraction thereof (an increase of \$30.00).

Subsection (e).

The Proposed Rulemaking would increase the fee for field consultations from \$110.00 per hour to \$ 280.00 per hour, or any fraction thereof.

Moreover, if the distance to the job site were more than 50 miles from the District Elevator Unit Office, the actual travel time would be added to the inspection time for purposes of computing the total charge.

Subsection (f).

The Proposed Rulemaking would amend subsection (f) to reflect that the Division may charge a fee for an alteration inspection, even if a conveyance has already been inspected (and a fee paid for that inspection) during the same permit year. Under existing law, the Division would not charge an alteration inspection fee if a permit holder had already paid the fee for an inspection during the same permit year, even though the Division incurs costs conducting the inspection. The Division is proposing this amendment to recapture those costs which are lost under current law. In addition, the Proposed Rulemaking would increase the fee for determining whether applicable safety orders have been complied with from \$110.00 to \$140.00 per hour, or any fraction thereof.

Subsection (g).

The Proposed Rulemaking would amend Subsection (g) to clarify that the Division may recoup its cost in processing and mailing a permit, up to a maximum of \$15.00.

Subsection (h).

Subsection (h) would create several new fees to cover the Division's expenses in processing and issuing new classes of certifications created through recent legislation. The new classifications include: Certified Qualified Conveyance Company; Certified Qualified Conveyance Inspection Company; Certified Competent Conveyance Mechanic; Temporary Certified Competent Conveyance Mechanic; Emergency Certified Competent Elevator Mechanic; and Certified Qualified Conveyance Inspector.

Subsection (h) would also create a \$140.00 fee for renewal of a CQCC, CCCM, CQCIC or a CQCI certification, and a \$100.00 fee for administration of each certification examination. A \$35.00 fee would apply to the replacement of a certification.

Subsection (i).

Subsection (i) would establish fees for the issuance of permits for the erection, construction, or installation of conveyances, including the plan approval. Like the other new fees contemplated in the Proposed Rulemaking, the fees in Subsection (i) are calculated using the base hourly rate of \$140.00.

Subsection (j).

Subsection (j) would establish the fees for alteration permits, including plan review, based on the type and amount of work involved in reviewing and processing the permits. For example, the fee for one alteration or an alteration in combination with a second alteration would be \$280.00. The permit fee for similar alterations to similar conveyances in the same building would be \$140.00 per unit. The fee to permit a combination of more than two alterations would be \$560.00.

Subsection (k).

The fee for any change order review of plans would be \$140.00 per hour with a minimum charge of \$280.00.

Subsection (l).

The Proposed Rulemaking would merely re-letter former subdivision (h) as subdivision (l), to reflect the addition of new language.

MORE INFORMATION

The full text of the Proposed Rulemaking, and all information upon which the Proposed Rulemaking is based, including an initial statement of reasons for the Proposed Rulemaking, are available upon request. Inquiries concerning the Proposed Rulemaking, including questions regarding the substance of the Proposed Rulemaking, may be directed to:

Chris Grossgart
Staff Counsel III
Department of Industrial Relations
Division of Occupational Safety and Health
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
(415) 703-5080

Or

Michael Mason, Chief Counsel
Department of Industrial Relations
Division of Occupational Safety and Health
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
(415) 703-5080

The Division's rulemaking file for the Proposed Rulemaking is open for public inspection Monday through Friday, from 9:00 a.m. to 5:00 p.m., at the address

shown above. Interested parties may obtain copies of the initial statement of reasons, the actual text of the Proposed Rulemaking, this notice, and the final statement of reasons, (once it has been prepared pursuant to Government Code section 11346.9(a),) from the Division representative named above, or from the Division's website (www.dir.ca.gov/DOSH).

COST OR SAVINGS OF THE PROPOSED REGULATIONS

Costs or Savings to State Agencies: No costs or saving to state agencies will result as a consequence of the Proposed Rulemaking. Although the Proposed Rulemaking establishes fees, the Division does not impose these fees on other state agencies.

Impact on Housing Costs: The Proposed Rulemaking will not significantly affect housing costs.

Impact on Businesses: The Division has made an initial determination that the Proposed Rulemaking will not result in a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The Proposed Rulemaking will increase the cost of inspections about 27% per unit inspected. The impact will depend on the total number of conveyances for which a private person or business is responsible. This figure varies immensely and therefore the cost is described per unit.

Costs or Savings in Federal Funding to the State: The Proposed Rulemaking will not result in costs or savings in federal funding to the State.

Costs or Savings to Local Agencies or School Districts: No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate".

Other Nondiscretionary Costs or Savings Imposed on Local Agencies: The Proposed Rulemaking does not impose nondiscretionary costs on, or create savings for, local agencies.

DETERMINATION OF MANDATE

The Proposed Rulemaking does not impose a mandate on local agencies or school districts. The Division has determined that the Proposed Rulemaking does not impose a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the Proposed Rulemaking does not constitute a "new program or higher

level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within meaning of Section 6 of Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The Proposed Rulemaking does not require any local agency to carry out the governmental function of providing services to the public.

EFFECT ON SMALL BUSINESSES

It has been determined that the Proposed Rulemaking may affect small businesses.

ASSESSMENT

The adoption of the Proposed Rulemaking will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONSIDERATION OF ALTERNATIVES

The Division must determine that no reasonable alternative considered by it, or that has been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.